

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Russell Brimer, Ganz U.S.A., LLC,

This Settlement Agreement is entered into by and between Russell Brimer, (hereinafter “Brimer”) and Ganz U.S.A., LLC incorrectly named as Ganz, Inc. (hereinafter, “Ganz”), with Brimer and Ganz collectively referred to as the “Parties.” Brimer is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Ganz employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §25249.5 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Brimer alleges that Ganz has manufactured, distributed and/or sold in the State of California vinyl-coated tape measures containing lead. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical known to the State of California to cause birth defects and other reproductive harm. Lead is referred to herein as the “Listed Chemical.”

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as follows: vinyl-coated tape measures containing the Listed Chemical including, but not limited to, *Special Teacher Tape Measure*, #EX12883 (#6 61371 01157 8). All such items shall be referred to herein as the "Products."

### **1.4 Notice of Violation**

On or about May 22, 2009, Brimer served Ganz and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Ganz and such public enforcers with notice that alleged that Ganz was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

### **1.5 No Admission**

Ganz denies the material factual and legal allegations contained in Brimer's Notice and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Ganz of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Ganz of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Ganz. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Ganz under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 31, 2009.

**2. INJUNCTIVE RELIEF: REFORMULATION**

As of the Effective Date, Ganz shall only manufacture or cause to be manufactured Products for sale in California that are Lead Free, as set forth below. For purposes of this Settlement Agreement, "Lead Free" shall mean Products containing less than or equal to 600 ppm of lead when analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies, 3050B or 6010B, or any method allowed by any state or federal agency to assess the lead content in the Products.

**3. MONETARY PAYMENTS PURSUANT TO HEALTH & SAFETY CODE**

**§25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Ganz shall pay \$1,000.00 in settlement payments to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these settlement monies remitted to Brimer as provided by California Health & Safety Code §25249.12(d). Ganz shall issue two separate checks for the settlement payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of California's Office of Environmental Health Hazard Assessment ("Hirst & Chanler LLP in Trust for OEHHA") in the amount of \$750.00 representing

75% of the total settlement payments and (b) one check to “Hirst & Chanler LLP in Trust for R. Brimer” in the amount of **\$250.00** representing 25% of the total settlement payments. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of **\$750.00**. The second 1099 shall be issued to Brimer in the amount of **\$250.00** whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before ten days after the Effective Date, at the following address:

Hirst & Chanler LLP  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

**4. REIMBURSEMENT OF FEES AND COSTS**

The parties reached an accord on the compensation due to Brimer and his counsel under the private attorney general doctrine and contract law. Under these legal principles, Ganz shall reimburse Brimer’s counsel for fees and costs incurred as a result of investigating, bringing this matter to Ganz’s attention, and negotiating a settlement in the public interest. Ganz shall pay Brimer and his counsel **\$16,800.00** for all attorneys’ fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to “Hirst & Chanler LLP” and shall be delivered on or before ten days after the Effective Date, at the following address:

Hirst & Chanler LLP  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

Ganz shall issue a separate 1099 for fees and cost paid in the amount of **\$16,800.00** to Hirst & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710 (EIN: 20-3929984). Except as provided in this paragraph 4, the parties shall bear their own attorney fees and costs.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Ganz and Downstream Customers**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public and on behalf of the public interest, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Ganz and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to Beverly Fabrics, Inc.), franchisees, dealers, customers, owners, purchasers, users, parent

companies, affiliated entities, partners, subsidiaries, predecessors, successors, assigns and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This release is limited to those Claims that arise under Proposition 65, such as Claims relate to an alleged failure to warn about exposures to or identification of lead contained in the Products.

In addition to the foregoing, Brimer, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all Claims against Ganz and each of its Releasees. This additional release, which Brimer is providing in his individual capacity, is limited to those Claims that arise with respect to Proposition 65, such as Claims that relate to an alleged failure to warn about exposures to or identification of any chemicals listed under Proposition 65 contained in any products sold by Ganz, its parents, subsidiaries, affiliated entities, predecessors, successors and/or assigns.

## **5.2 Ganz's Release of Brimer**

Ganz waives any and all claims against Brimer, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Brimer and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

### **5.3 Civil Code §1542 Waiver**

All parties acknowledge and agree that they are aware of and understand the provisions of Code of Civil Procedure Section 1542 and hereby knowingly and voluntarily waive the benefits of that section which provides, "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

### **6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

### **7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Ganz shall provide written notice to Brimer of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Ganz:

Annette K. Hansen  
General Counsel  
Ganz U.S.A., LLC  
60 Industrial Parkway, #043  
Cheektowaga, NY 14227-9903

For Brimer:

Proposition 65 Coordinator  
Hirst & Chanler, LLP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.



**10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

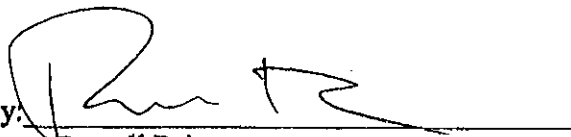
Brimer agrees to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f).

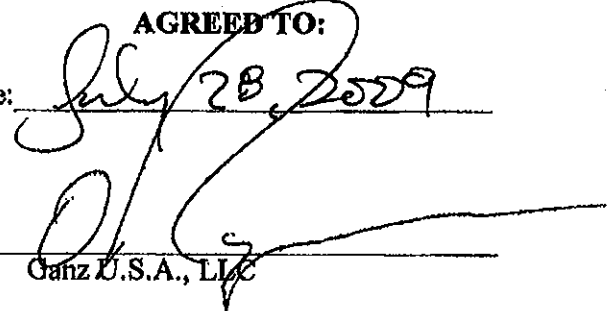
**11. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**12. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**  
Date: 7.28.09  
By:   
Russell Brimer

**AGREED TO:**  
Date: July 28, 2009  
By:   
Ganz U.S.A., LLC